



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 1, 1998

Mr. Thomas G. Ricks
President
University of Texas Investment
Management Company
210 West Sixth Street, 2nd Floor
Austin, Texas 78701

OR98-2908

Dear Mr. Ricks:

You ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 119056.

The University of Texas Investment Management Company ("UTIMCO") received a request for "all memoranda, diaries, correspondence, writings, documents, journals, notes, personnel notes, phone logs, e-mails and any other information in whatever form . . . concerning, involving, mentioning or relating to either Initiate!! and/or Steve Lisson." In response to the request, you submit to this office for review the information which you assert is responsive.¹ You explain that "[d]ue to the large quantity of information and the extremely onerous undertaking required by the UTIMCO to comply with Mr. Lisson's request, UTIMCO responded to Mr. Lisson's request by formally asking him to clarify and narrow his request to more readily identify the documents that are the focus of his inquiry." You assert that the submitted information is excepted from required public disclosure based on sections 552.103, 552.107 and 552.111 of the Government Code. We have considered the arguments you raise against disclosure and have reviewed the information submitted.

¹You state that "[s]ome of the information in the Correspondence is not within the scope of Mr. Lisson's request and is included in the Correspondence merely because such information is on the same document as information requested by Mr. Lisson." Since some information that is not within the scope of the request is interspersed with the responsive information, we agree that to the extent the submitted information is not within the scope of the pending open records request, our office need not address the release of such information.

Initially, we address your assertion that the requested information is “unreasonably voluminous” and therefore the requestor should “clarify and narrow his request,” and that the request for information may require the department to perform legal research.² The Open Records Act does not require a governmental body to conduct legal research, but a governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision Nos. 563 (1990), 561 (1990). When a governmental body is presented with a broad request for information rather than for specific records, it should advise the requestor of the types of information available so that they may narrow or clarify their request.³ *Id.*

In your letter, dated August 7, 1998, you explain that although the original request for information was received on July 8, 1998, your office sought clarification from the requestor as for the requested records. *See* Gov’t Code § 552.222(b); *see* Open Records Decision No. 333 (1982). Chapter 552 of the Government Code imposes a duty on a governmental body seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten *business* days after the governmental body’s receipt of the request for information. Therefore, we begin with the threshold question of the tolling of the statutory deadline for submission of an open records request. You state that UTIMCO received the request for information on July 8, 1998. The tenth business day after UTIMCO received the request would have been July 22, 1998. On July 22, 1998, UTIMCO sought clarification from the requestor. In his reply letter, received by UTIMCO on July 25, 1998, the requestor responds to the clarification request, by stating “you know exactly where and what information both paper and electronic to provide.” However, this office did not receive UTIMCO’s request for an open records decision and claiming exceptions under the act until August 7, 1998.

The act is silent concerning “tolling” of the ten-day deadline for submitting an open records request. However, the act permits a governmental body to “clarify a request” and to “discuss with the requestor how to” narrow the scope of a request:

If what information is requested is unclear to the governmental body, the governmental body may ask the requestor to clarify the request. If a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed, but the governmental body may not inquire into the purpose for which information will be used.

²In your clarification request, you advise the requestor about “the costs of labor, overhead and photocopying” of the requested information. Generally, the charges for providing public information are established by the General Services Commission. Gov’t Code § 552.262. If, however, the estimated cost of providing the copies exceeds \$100, you may require a deposit or bond from the requestor. Gov’t Code § 552.263(a); *see also* Gov’t Code §§ 552.261-.273.

³You have submitted both the letter from UTIMCO seeking clarification and the requestor’s reply letter.

Gov't Code § 552.222(b); *see* Open Records Decision No. 304 (1982) (governmental body may require requestor to identify particular kind of document sought). This office has determined that the time for the ten-day deadline does not run while a governmental body attempts to informally resolve a request and there is legitimate confusion about the scope of a request. *See* Open Records Decision No. 333 (1982). In Open Records Decision No. 333 (1982), we concluded that because there was legitimate confusion on the part of the City of Houston about the scope of a request for police blotters and about whether the request could be resolved without requesting an open records decision on the matter, the operative request for information was the requestor's subsequent letter in which the request was clarified.


Here, UTIMCO has not stated that it did not understand the scope of the request as written. Nor are we informed that UTIMCO and the requestor believed the request could be resolved informally without requesting a decision. Rather, it appears that on the day the request for a decision was due, UTIMCO sent correspondence to the requestor in an attempt to obtain his agreement to narrow and reduce the amount of information being requested. We do not believe UTIMCO tolled the statutory deadline in this way. Furthermore, even if we were to find that UTIMCO actions tolled the statute while discussing the reduction of the request, we believe the statute would be tolled only during the time when UTIMCO entered into discussion with the requestor on July 22nd until the conclusion of that discussion on July 25 when the requestor declined to reduce the scope of the request. Thus, in any case, the time was running from July 8, 1998, the date UTIMCO received the request, until July 22, 1998.

The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). Therefore, under the facts presented, we conclude that UTIMCO failed to meet its ten-day deadline for requesting an opinion from this office for the first request. Because UTIMCO did not request an attorney general decision within the deadline provided by section 552.301(a), the requested information is presumed to be public information. Gov't Code § 552.302; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *See, e.g.*, Open Records Decision No. 150 (1977); *Hancock*, 797 S.W.2d at 381.

Sections 552.103, 552.107 and 552.111 are discretionary exceptions, and the failure to timely raise these exceptions results in the waiver of their protection. *See generally* Open Records Decision Nos. 551 (1990). Upon review of your arguments and claimed exceptions against disclosure of the information, we conclude you have not shown a compelling interest for overcoming the presumption that the requested information is public. *See* Open Records Decision No. 473 (1987). In accordance with sections 552.301 and 552.302, the information at issue is presumed public. Thus, you may not rely upon any of the claimed exceptions to withhold the information requested in the first request. UTIMCO, therefore, must release any responsive information.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,


Sam Haddad
Assistant Attorney General
Open Records Division

SH/mjc

Ref.: ID# 119056

Enclosures: Submitted documents

cc: Mr. Stephen N. Lisson
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